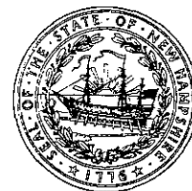




State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



William and Terri Connolly  
102 Seaverns Bridge Road  
Merrimack, NH 03054

**ADMINISTRATIVE FINE  
BY CONSENT  
No. AF 03-027**

### I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and William and Terri Connolly, pursuant to RSA 482-A:13. This Administrative Fine by Consent is effective upon signature by all parties.

### II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 6 Hazen Drive, Concord, NH 03302-0095.
2. William and Terri Connolly are individuals having a mailing address of 102 Seaverns Bridge Road, Merrimack, NH 03054.

### III. BACKGROUND

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
5. William and Terri Connolly are owners of land located at 102 Seaverns Bridge Road, Merrimack, NH more specifically identified on Merrimack Tax Map 3A, as Lot 59 ("the Property").
6. The Property is the subject of a wetlands complaint filed by the Town of Merrimack alleging unpermitted filling of wetlands since 1989 and more recently in violation of RSA 482-A:3, I.
7. The Property abuts the Souhegan River and is within the jurisdiction of RSA 483-B, the Comprehensive Shoreland Protection Act.

8. On November 8, 1989, former chairman of the Wetlands Board, Delbert Downing received a letter from the Merrimack Conservation Commission alleging that a prior owner of the property had filled 'what appeared to be an old oxbow of the adjacent Souhegan River'.
9. On May 14, 2003, a complaint was received from the Town of Merrimack referencing the old complaint and alleging that more recent additional fill in wetlands had taken place.
10. On May 28, 2003, DES personnel inspected the Property. DES personnel found evidence of fill in wetlands along the southwest corner of the property and recommended more extensive research on the age and limits of fill.
11. On June 9, 2003, DES sent a letter to Mr. and Mrs. Connolly requesting submission of a wetlands delineation showing current and prior impacts to wetlands.
12. On July 9, 2003 DES personnel reinspected the Property and performed exploratory auger holes at the toe of the slope at the southwestern corner of wetlands fill. The results of this exploration revealed an old fill layer and a shallow layer of newer fill totally approximately 9,000 square feet within jurisdictional wetlands. The inspection also revealed a deeper layer of new fill on the northerly edge of the toe of fill in wetlands.
13. Based on the inspection, DES personnel concluded that, so long as the existing vegetated buffer is supplemented with new plantings in the Protected Shoreland (see paragraph V.4.a) removal of the fill placed in wetlands is not necessary.

#### **IV. ALLEGATIONS**

1. William and Terri Connolly violated RSA 482-A:3, I by filling approximately 9,000 sq.ft. of wetlands without a permit from DES.

#### **V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING**

1. For the violations noted above, Env-C 614.03(a)(1) specifies a fine of \$1,000.
2. William and Terri Connolly agree to pay \$500 upon execution of this Agreement by an authorized representative of William and Terri Connolly.
3. Payment under Paragraph V.2 shall be made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attn: Michael Sclafani, Legal Assistant  
PO Box 95  
Concord, NH 03302-0095

4. The remaining \$500 fine shall be suspended contingent on the following:
  - a) Submission of a planting plan by **August 15, 2003**, consistent with the enclosed Shoreland Fact Sheet entitled "Model Restoration Plan for Shoreland Properties" and which, at a

minimum, shall establish a vegetated buffer measuring 44' x 100' as shown on the enclosed diagram submitted by the Connollys ("the Planting Plan").

b) Implementation of the Planting Plan as approved by DES by **October 1, 2003**.

5. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

6. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of the Connollys, the Director of the Water Division, and the Commissioner of DES.

7. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

8. Provided further that, this Administrative Fine by Consent shall fully resolve any and all claims that the State of New Hampshire may have against the Connollys arising from the facts alleged herein, and the State shall not seek any other civil, criminal or administrative penalty against the Connollys arising from the facts alleged herein. This shall not preclude the state from taking any action necessary to enforce this agreement or from taking action on future violations or against any other parties.

**COPY**  
William Connolly

Aug 1, 2003  
Date

**COPY**  
Terri Connolly

Aug 1, 2003  
Date

Department of Environmental Services

**COPY**  
Harry T. Stewart, PE, Director  
Water Division

August 6, 2003  
Dated

Harry T. Stewart, PE, Director  
Water Division

**COPY**  
Michael P. Nolin, Commissioner

08 08 03  
Dated

CC: Gretchen Rule, DES Legal Unit  
Public Information Officer, DES PIP Office